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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter of)

MCI Telecommunications Corporation)

Petition for a Declaratory Ruling That)
Carriers May Assess Interstate Customers)
Interstate Universal Service Charges Based)
on Total Revenues)

CC Docket No. 96-45

**COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"),¹ through undersigned counsel and pursuant to *Public Notice*, DA 98-682 (released April 10, 1998), hereby supports the Petition for Declaratory Ruling filed by MCI Telecommunications Corporation ("MCI") in the captioned proceeding on April 3, 1998. In its Petition, MCI seeks a ruling that telecommunications carriers are not precluded from recovering through federally-tariffed percentage charges applied to total end-user billed revenues, including revenues from intrastate services, the contributions made by them to federal universal service support mechanisms. TRA agrees with MCI that the Commission afforded telecommunications carriers in its *Universal Service Report and Order* the

¹ A national trade association, TRA represents more than 650 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services.

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"flexibility to structure their recovery of the costs of universal service" through federally-tariffed charges of the carriers' choosing, including percentage charges based on total end-user billings.²

In its *Universal Service Report and Order*, the Commission authorized carriers "to pass all or part of their contributions [to federal universal service support mechanisms] on to their customers in customer bills."³ The Commission directed carriers in so doing to "include complete and truthful information regarding the contribution amount," explaining, for example, that it believed that "it would be misleading for a carrier to characterize its contribution as a surcharge."⁴ Otherwise, the Commission left to carriers how contributions to universal service support mechanisms should be recovered, noting that "carriers retain the flexibility to structure their recovery of the costs of universal service in many ways."⁵ For example, the Commission suggested that carriers "could create new pricing plans subject to monthly fees."⁶

While the Commission directed "carriers . . . [to] recover . . . [universal service support] contributions solely through rates for interstate services,"⁷ it did not in so doing preclude carriers from applying percentage assessments to total end-user billings, including billings for intrastate services. The mandate that universal service support contributions be recovered solely

² Federal-State Joint Board on Universal Service, 12 FCC Rcd. 8776, ¶ 855 (1997), *recon.* CC Docket No. 96-45, FCC 97-420 (Dec. 31, 1997), *pet. for rev. pending sub. nom. Texas Office of Public Utility Counsel v. FCC*, No. 97-60421 (5th Cir., June 24, 1997).

³ Id.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id. at ¶ 838.

through rates for interstate services requires only that the recovery mechanism be a federally-tariffed charge. To hold otherwise would be to elevate form over substance, prompting burdensome and unnecessary changes to newly-modified billing software, the cost of which ultimately will be reflected in end-user rates.

The Commission has long recognized that carriers may combine intrastate and interstate minutes in determining customer satisfaction of federally-tariffed volume commitments or may apply federally-tariffed discounts to customers' combined intrastate and interstate billings.⁸ Such provisions generate interstate charges, which are tariffed in federal tariffs and which are payable by customers of interstate services. The mere fact that intrastate usage or revenues are included in the rate-making calculus underlying these charges does not impact their jurisdictional nature.

The same holds true for federally-tariffed charges designed to recover universal service support contributions. Whether or not computed with reference to total end-user billings, including billings for intrastate services, these charges are interstate charges recovered through federal tariffs from customers of interstate services. In other words, they are "rates for interstate services,"⁹ just as the discounted rates generated by federally-tariffed volume discounts applied to an end-user's combined intrastate and interstate billings are rates for interstate services. Like the

⁸ See, e.g., U S West Communications, Inc., Tariff F.C.C. No. 4, 8 FCC Rcd 2924 (1993) ("All three plans provide discounts based on volume of usage, and allow customers to combine their intraLATA interstate and intrastate minutes to reach the minimum usage levels."); AT&T Communications, Inc., Revisions to Tariff F.C.C. No. 2, 6 FCC Rcd 5677 (1991) ("AT&T's 800 Customer Specific Bonus Plan (800 Bonus) offers term plan discounts for the usage component of Domestic 800, READYLINE, MEGACOM 800, 800 Validator, and intrastate READYLINE and MEGACOM 800 services"); AT&T Communications, Inc., Revisions to Tariff F.C.C. No. 16, 5 FCC Rcd 2524 (1990) ("offers an additional 25 percent discount to the total amount of intrastate and interstate usage under the Expanded Discount Plan").

⁹ Federal-State Joint Board on Universal Service, 12 FCC Rcd. 8776 at ¶ 838.

Commission in "assessing contributions based on intrastate and interstate revenues," carriers would "merely . . . [be] calculating a federal charge based on both interstate and intrastate revenues."¹⁰

Certainly, a percentage assessment applied to total (intrastate and interstate) end-user billings is no different in its jurisdictional impact than the flat monthly fee suggested by the Commission as a vehicle for recovering universal service support contributions. Assuming a rate of \$0.10 per minute, an end-user with 1,000 minutes of usage, 999 of which are intrastate and 1 of which is interstate, would be no less jurisdictionally impacted by a four percent federal assessment on total end-user revenues than by a federal monthly recurring charge of \$4.00. In both instances, a predominantly intrastate service user would be assessed a \$4.00 federal charge.

A charge designed to recover a carrier's universal service support contribution from end-users is no different than any other carrier-initiated charge, because, as the Commission has repeatedly emphasized, it is a charge voluntarily assessed by the carrier. As described by the Commission, the carrier has "chosen to pass through the contribution or part of the contribution to its customers."¹¹ The carrier is not, again as emphasized by the Commission, imposing a Commission-mandated (and hence defined) surcharge.¹²

As a purely practical matter, the recovery by carriers of contributions made by them to federal universal service support mechanisms through federally-tariffed percentage charges applied to total end-user billed revenues, including intrastate revenues, is common in the industry. Over the past year, carriers have had to modify their billing software to accommodate a number of

¹⁰ Id. at ¶ 821.

¹¹ Id. at ¶ 855.

¹² Id. at ¶ 853.

new charges prompted by Commission actions, including presubscribed interexchange carrier charges and payphone surcharges, as well as universal service support assessments. These modifications have been costly both in terms of committed dollars and resources. A denial by the Commission of MCI's petition would necessitate still further software modifications and additional costs and administrative burdens. These costs, like all other costs of doing business, ultimately will be borne by end-users. And, given the flexibility the Commission has afforded carriers in structuring their recovery of universal service contributions, these additional costs will not produce any cognizable benefit for either consumers of interstate or intrastate services.

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to grant the declaratory ruling requested by MCI that telecommunications carriers are not precluded from recovering through federally-tariffed percentage charges applied to total end-user billed revenues, including intrastate revenues, the contributions made by them to the federal universal service support mechanisms.

Respectfully submitted,

**TELECOMMUNICATIONS
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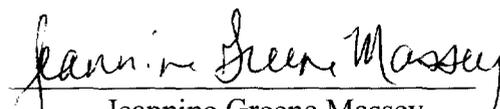
CERTIFICATE OF SERVICE

I, Jeannine Greene Massey, hereby certify that copies of the foregoing Comments of the Telecommunications Resellers Association have been served by first class mail, postage prepaid, this 24th day of April, 1998, on the following:

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